

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LAUREEN F. BAGLEY)	FOIA Control Nos. 2007-466 to 480
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: August 28, 2008**Released: September 4, 2008**

By the Commission:

1. By this Memorandum Opinion and Order, we deny an application for review, dated October 16, 2007, by Laureen F. Bagley (Bagley),¹ appealing the denial of her request for a waiver of fees in connection with the above-referenced 15 Freedom of Information Act (FOIA) requests. We conclude that Bagley has not met the statutory standard for granting a waiver.

I. BACKGROUND

2. Each of Bagley's FOIA requests sought "any and all documents relating to Registered Tower # [15 specified numbers]." ² Her requests did not seek a fee waiver. However, in a subsequent e-mail, Bagley stated "I am asking on behalf of my clients that the research fee be waived due to financial hardship." ³

3. The Associate General Counsel, Administrative Law Division (OGC) denied Bagley's request for a fee waiver. ⁴ OGC noted, initially, that Bagley's waiver request did not comply with 47 C.F.R. § 0.470 (c), which requires that fee waiver requests must be included in the original FOIA request. ⁵ Additionally, OGC found that even if the request were properly made, it should be denied. OGC observed that the FOIA provides that a waiver of FOIA fees may be granted only "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not

¹ Letter from Laureen F. Bagley to Commission's Office of General Counsel (Oct. 16, 2007) (AFR).

² 15 Letters from Laureen F. Bagley to Federal Communications Commission (Aug. 14, 2007). In a subsequent conference call, Bagley indicated that she was particularly interested in any radio frequency (RF) schematics, and other documents on the strength and direction of RF emissions, the height of the emitting devices, and the identities of the licensees using the towers. *See* Letter from Roger Noel, Chief, Mobility Division to Ms. Laureen F. Bagley, Esq. (Nov. 29, 2007) at 2.

³ E-mail from Laureen F. Bagley to Matthew Nodine (Sept. 15, 2007) (Sept. 15 e-mail).

⁴ Letter from Joel Kaufman, Associate General Counsel to Laureen F. Bagley, Esq. (Sept. 28, 2007) (Denial).

⁵ Denial at n.2.

primarily in the commercial interest of the requester.”⁶ Thus, OGC explained that, to qualify for a fee waiver, the requester must demonstrate specifically how disclosure of the materials sought will contribute to the public’s understanding of the operations or activities of the government.⁷

4. OGC found that Bagley did not explain how release of the records would contribute to the public understanding of the operations or activities of the government and that financial hardship was not a statutory basis for granting a fee waiver.⁸ OGC further found that Bagley had not shown how she intended to disseminate the information requested to the public.⁹

5. In her AFR, Bagley elaborates on the public interest aspects of her FOIA request. Bagley’s pleadings indicate that she is an attorney representing the White family, a Texas family living in the vicinity of the specified towers. Bagley explains that “[t]he documents requested are for the purpose of determining the cause of potentially life threatening electrical impulses experienced by the White family and other persons that live and work in the surrounding area.”¹⁰ She further explains that the Whites have suffered burns and painful electrical impulses to their bodies and that the information requested will be used to determine the source of the dangerous emissions. As to her plans to disseminate the information to the public, Bagley states that a local newspaper, *The Tyler Morning Telegraph*, is interested in running an article on the phenomenon that is occurring on the White’s homestead to inform the public of this situation.¹¹

II. DISCUSSION

6. We find that OGC correctly denied Bagley’s request for a fee waiver for the reasons stated in its Denial. We also find that additional information provided by Bagley in her AFR does not change that result.¹²

7. Assuming for the sake of argument that the information Bagley requests might benefit the public to the extent it disclosed the nature of alleged harmful RF emissions, it would not contribute “significantly to public understanding of the operations or activities of the government,” as the FOIA requires for a fee waiver.¹³ The information reflects the technical

⁶ Denial at 1-2, citing 5 U.S.C. § 552(a)(4)(A)(iii); see also 47 C.F.R. § 0.470(e) (fee waiver request must include a statement “explaining with specificity” the reasons demonstrating why requester qualifies for waiver).

⁷ See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (*MESS*) (requiring an explanation with “reasonable specificity how disclosure will contribute to public understanding”), citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987) (burden is on the requester to identify and demonstrate with “reasonable specificity” the public interest to be served).

⁸ Denial at 2.

⁹ *Id.*

¹⁰ AFR at 1.

¹¹ *Id.*

¹² We also agree with OGC that Bagley’s request is defective in that it did not conform to the requirement in 47 C.F.R. § 0.470(e) that the waiver request be contained in the FOIA request.

¹³ See 5 U.S.C. § 552(a)(4)(A)(iii).

characteristics of various RF transmission facilities. To the extent that the information would contribute to the understanding of the operations or activities of any entity, Bagley has not demonstrated that would be the operations or activities of the government rather than the Commission licensees that operate these facilities.¹⁴

8. Moreover, the circumstances present here do not demonstrate that Bagley's FOIA request would primarily serve to inform the public. Information posted on the Internet by Bagley's law firm, Sloan, Hatcher, Bagley & Perry, indicates that one of the firm's specialties is personal injury litigation, and describes Bagley as a personal injury trial lawyer.¹⁵ This, and Bagley's description of the White family's situation, suggests that Bagley's FOIA request is primarily intended to support potential personal injury litigation by the White family and not to inform the public.¹⁶ Indeed, Bagley stated, both in initially requesting a fee waiver and in her AFR, that she was requesting a waiver "on behalf of" her clients, the Whites.¹⁷ In any event, the assertion that a newspaper "is interested in running an article" on the Whites provides little assurance of significant public dissemination of the requested information.¹⁸

III. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, that the application for review, dated October 16, 2007, by Laureen F. Bagley IS DENIED. Bagley may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).

¹⁴ See *Brown v. U.S. Patent and Trademark Office*, 445 F.Supp.2d 1347, 1359 (M.D. Fla. 2006), *aff'd*, 266 Fed. Appx. 866 (11th Cir. 2007) (requester not entitled to fee waiver where he did not show "a direct and clear relationship between his request and the identifiable operations or activities of the USPTO").

¹⁵ See <http://www.texttrialfirm.com/pipll.php> and <http://www.texttrialfirm.com/attorneys-bagley.php>.

¹⁶ See *MESS*, 835 F.2d at 1285-86 (although tort claim was not a commercial interest, public interest was not shown where requester failed to show that claimed intent to inform the public about water pollution at an Air Force base was not a pretext for advancing private lawsuits). See also *McClain v. U.S. Dep't of Justice*, 13 F.3d 220, 221 (7th Cir. 1993) (a former inmate's request for information concerning federal investigation and prosecution of him served to facilitate a challenge to his conviction and therefore did not qualify as contributing significantly to the public understanding of government operations).

¹⁷ See Sept. 15 e-mail; AFR at 1.

¹⁸ See *Larson v. CIA*, 843 F.2d 1481, 1482-83 & n.5 (D.C. Cir. 1988) (letter from editor of *Washington Post* to requester indicating an interest in the requested information was insufficient to establish requester's ability to disseminate information to public, where requester was not himself a journalist).

10. The officials responsible for this action are the following: Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary